

July 21, 2010

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

EDDIE LEE WILLIAMS,

Petitioner - Appellant,

v.

H.A. LEDEZMA,

Respondent - Appellee.

No. 10-6098

(W.D. Oklahoma)

(D.C. No. 5:10-CV-00086-W)

ORDER AND JUDGMENT*

Before **HARTZ, ANDERSON**, and **TYMKOVICH**, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

Petitioner and appellant Eddie Lee Williams, a federal prisoner proceeding *pro se*, appeals the denial of his 28 U.S.C. § 2241 petition which generally challenged his continuing criminal enterprise (“CCE”) conviction, in light of the

*This order and judgment is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Supreme Court's decision in Richardson v. United States, 526 U.S. 813 (1999).

He sought to invoke the district court's habeas jurisdiction under § 2241, arguing that 28 U.S.C. § 2255 provided an inadequate or ineffective remedy. We agree with the district court's dismissal and therefore affirm its decision.

BACKGROUND

Mr. Williams was convicted on multiple drug-related charges in 1991. On direct appeal, this court vacated his conviction for conspiracy but affirmed the district court's judgment in all other respects. United States v. Williams, No. 91-7094, 1993 WL 125403 (10th Cir. 1993) (unpublished). Mr. Williams then filed a § 2255 petition, which the district court denied. This court affirmed that denial. United States v. Williams, No. 97-7041, 1998 WL 440481 (10th Cir. 1998) (unpublished).

The Supreme Court issued its decision in Richardson in 1999, in which it clarified certain aspects of the law regarding CCEs. Richardson held that a jury in a CCE case must unanimously agree not only that the defendant committed some "continuing series of violations," but also must agree which specific "violations" make up that "continuing series." Richardson, 526 U.S. at 815 (quoting 21 U.S.C. § 848). See United States v. Dago, 441 F.3d 1238, 1244 (10th Cir. 2006). Accordingly, Mr. Williams invoked Richardson when, in January of 2010, he sought habeas corpus relief pursuant to 28 U.S.C. § 2241, arguing that he is actually innocent of the CCE conviction because the jury was not instructed

to make unanimous findings as to the acts comprising the “series of violations” needed to support his CCE conviction. He also challenged the sufficiency of the evidence regarding the element of the offense requiring that he hold a managerial position over five or more persons acting in concert. The district court referred the matter to a magistrate judge, who issued a lengthy and thorough report recommending dismissal of the petition. The district court adopted the magistrate judge’s report and dismissed Mr. Williams’ petition. The district court also denied Mr. Williams leave to proceed on appeal *in forma pauperis*, ruling that the appeal is not taken in good faith. This appeal followed. The government declined to file a brief.

DISCUSSION

As the district court noted, it is well-established that habeas petitions filed pursuant to § 2241 and those filed pursuant to § 2255 serve different and distinct purposes. “A petition under 28 U.S.C. § 2241 attacks the execution of a sentence rather than its validity and must be filed in the district where the prisoner is confined.” Bradshaw v. Story, 86 F.3d 164, 166 (10th Cir. 1996). A § 2255 motion, by contrast, “attacks the legality of detention . . . and must be filed in the district that imposed the sentence.” Id. Since Mr. Williams is attacking the legality of his conviction and sentence, § 2255 is generally the exclusive remedy available to a federal prisoner such as he, unless a § 2255 remedy is inadequate or ineffective. Carvallo v. Pugh, 177 F.3d 1177, 1178 (10th Cir. 1999); 28 U.S.C.

§ 2255. In other words, a § 2241 habeas petition “is not an additional, alternative, or supplemental remedy, to the relief afforded by motion in the sentencing court under § 2255.” Williams v. United States, 323 F.2d 672, 673 (10th Cir. 1963)(per curiam).

Relying on a number of our cases, as well as cases from other circuits, the district court carefully explained why Mr. Williams is not entitled to relief under § 2241 in this case. We affirm that decision, for substantially the reasons set forth in the report and recommendation, subsequently adopted by the district court. We also deny Mr. Williams’ request to proceed on appeal *in forma pauperis*. See Boling-Bey v. U.S. Parole Com’n, 559 F.3d 1149, 1154 (10th Cir. 2009); DeBardeleben v. Quinlan, 937 F.2d 502, 505 (10th Cir. 1991).

CONCLUSION

For the foregoing reasons, we AFFIRM the district court’s decision dismissing Mr. Williams’ § 2241 petition.

ENTERED FOR THE COURT

Stephen H. Anderson
Circuit Judge